

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs July 25, 2006

STATE OF TENNESSEE v. RONALD EUGENE HALL

**Direct Appeal from the Criminal Court for Davidson County
No. 2001-D-2076 Cheryl Blackburn, Judge**

No. M2005-01721-CCA-R3-CD - Filed November 1, 2006

The defendant, Ronald Eugene Hall, was convicted by a Davidson County jury of second-degree murder and sentenced as a violent offender to twenty-five years in the Tennessee Department of Correction. On appeal, he challenges the sufficiency of the convicting evidence. Upon our review of the record and the parties' briefs, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which DAVID G. HAYES and ROBERT W. WEDEMEYER, JJ., joined.

David A. Collins, Nashville, Tennessee, for the appellant, Ronald Eugene Hall.

Paul G. Summers, Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Bret Gunn, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

BACKGROUND

The defendant and a co-defendant, Henry Lee Dixon, were indicted for first-degree murder arising out of the shooting of Pashay Stevenson at a convenience store on July 19, 2001.¹ Following a jury trial, the defendant was convicted of the lesser-included offense of second-degree murder. The jury found the co-defendant not guilty. The trial testimony relevant to this appeal is as follows.

James Nicholson testified that he was a friend of the victim and he was at the convenience store the night of the shooting. Mr. Nicholson said that he saw the victim exiting the market as he was entering. Within minutes, Mr. Nicholson heard several gunshots but he did not see the shooter.

¹ Elsewhere, the victim's name is spelled Pache; however, we are using the spelling used in the trial transcript.

Mr. Nicholson stated that he did not hear the victim in an argument or anything that would have led to the shooting.

Mathias Smith testified that he was a long-time friend of the victim and he also happened to be at the convenience store the night of the shooting. He estimated that he was approximately forty or fifty yards from the victim when the shooting started. Mr. Smith had a .40 caliber handgun with him so he shot at the person who had shot the victim. Mr. Smith saw the shooter jump in the back seat of a car and the car pull away. However, Mr. Smith believed one of his shots hit the getaway car in the left side. Mr. Smith admitted he could not see inside the car because the windows were tinted. Mr. Smith reported these events to Detective E. J. Bernard and gave the detective his handgun.

Dr. Feng Li of the Davidson County Medical Examiner's Office testified that the victim was shot four times. Dr. Li stated that only one bullet was recovered during the autopsy of the victim's body. Due to the autopsy revealing different sized entrance and exit wounds, Dr. Li admitted that two different weapons could have been involved.

Xavier Donnell testified that he arrived at the convenience store after the victim was shot. Mr. Donnell stated that he told Detective Bernard that he did not see the shooting but he heard about it. Mr. Donnell said that he was not in a position to see the driver of the car the shooter got into. Mr. Donnell identified his signature on a document that referenced his pretrial identification of the driver and shooter, but he maintained that he thought he was just identifying people with whom he had been incarcerated. Mr. Donnell further said that he only signed his name to the forms, and he did so to confirm that he had spoken with the detective. Mr. Donnell recalled being visited by a female attorney, but he denied telling that attorney that he had identified the person who shot the victim. Mr. Donnell maintained that he did not see the shooter and denied that he had changed his story.

E. J. Bernard testified that he was a detective with the Nashville Metropolitan Police Department at the time of the shooting. He testified that he spoke to Mr. Donnell about the incident and then showed him photographic arrays about two weeks later. Mr. Bernard stated that Mr. Donnell identified the defendant when asked if he recognized the man who shot the victim. Mr. Bernard said that Mr. Donnell identified the driver of the car as well. Mr. Bernard further said that Mr. Donnell knew he was to make an identification based on his eyewitness account and not second-hand information. Mr. Bernard admitted that the first time he spoke with Mr. Donnell he videotaped the conversation and Mr. Donnell did not make an identification. Mr. Bernard explained that the second encounter was not taped because he showed Mr. Donnell the photographic arrays while in the field.

Laura Dykes, Deputy Public Defender in Nashville, testified that she was the original attorney appointed to represent co-defendant Dixon in the Stevenson homicide case. Ms. Dykes stated that she went to see Mr. Donnell sometime after receiving discovery. Ms. Dykes said that she told Mr. Donnell that she was the co-defendant's attorney and showed him black and white copies of the photographic arrays she received in discovery. Ms. Dykes recalled that Mr. Donnell did not identify

the co-defendant, but he did identify the defendant. Ms. Dykes said that Mr. Donnell pointed to the defendant's picture and said that he was definitely involved, but she did not remember exactly what he said. Ms. Dykes further said that she filed a motion to have the co-defendant's bond reduced due to Mr. Donnell's inability to identify him, and while waiting to testify in that hearing Mr. Donnell was in a holding cell with the co-defendant for ten or fifteen minutes. Afterwards, Mr. Donnell told Ms. Dykes that he did not recognize anyone in the holding cell from the Stevenson homicide. Ms. Dykes stated that she was aware of former Detective Bernard's reputation, which was "he's not one hundred percent honest."

Ann Woofter testified that she was the court reporter for this trial from jury selection up until taking the stand.² Ms. Woofter stated that the previous day she was in the courtroom after lunch but before the judge or jury returned. The defendant was present in the courtroom, along with his counsel, the co-defendant and his counsel, the prosecutors, and the court clerk. During this time, the defendant began making unsolicited statements, during which, she turned on her tape-recording equipment. Ms. Woofter transcribed the defendant's statements, which she read:

[The defendant]: Yeah, I killed that ni**er. I don't give a f**k, man. I'll kill that ni**er again and again. . . . F**k this shit, I'm tired. Go on, take me out of the courtroom, I'm tired. . . . [F]**k the U.S. Government, man. Bulls**t is getting on my mother f**king nerves, man. I killed that ni**er. I don't give a f**k. I told that ni**er, I don't give a f**k, man. I'm tired of this bulls**t, man. . . .

Ms. Woofter stated that before she turned on her recording equipment, the defendant made two or three statements to the effect that the co-defendant did not have anything to do with the homicide. Ms. Woofter acknowledged that the defendant was loud and hysterical, like he was throwing a fit, when he made the remarks.

The state then presented testimony regarding another offense that was only to be considered for the purpose of identifying the defendant and co-defendant.³

Linda Provost testified that on July 20, 2001, the day after the Stevenson homicide, she and a friend, Shaquita Brooks, met the defendant and co-defendant at a grocery store parking lot. Ms. Provost said that she telephoned her friend, Marcus Scott, and then drove to his residence alone. Mr. Scott got into the passenger's seat of Ms. Provost's car and while they were sitting in the car, Ms. Provost heard gunshots outside the passenger's side of her car. Ms. Provost got out of the car and saw that it was the defendant who was firing the shots at her car. Ms. Provost identified the co-defendant's car as the car the defendant and co-defendant were in the night of the Scott shooting.

² A temporary court reporter filled in while Ms. Woofter testified.

³ The other offense is case number 2001-D-1974, which resulted in the defendant being convicted of the second-degree murder of Marcus Scott and the co-defendant convicted of facilitation of second-degree murder. The record indicates that the trial court conducted the requisite 404(b) hearing and limited the testimony regarding the other offense to minimize the prejudicial effect.

Ms. Provost admitted that she had asked the defendant to “beat up” Mr. Scott because Mr. Scott had hit her.

Shaquita Brooks testified that she was with Ms. Provost on July 20, 2001, when they met the defendant and co-defendant at the grocery store parking lot. She identified the car the men were in that night and said that the co-defendant asked her to move his car from one spot to another. Ms. Brooks stated that she moved the co-defendant’s car and as she was waiting she heard gunshots. Soon after, the defendant and co-defendant got into the car with her and she got out of the car. Ms. Brooks confirmed that earlier, in the grocery store parking lot, the co-defendant had told her they had a gun but not to worry because it was not loaded.

Metropolitan Nashville Police Department Officers Johnny Lawrence, Tommy Simpkins, Sergeant Danny Orr, Detective Roy Dunaway, Mike Pyburn, and Lorita Marsh also testified. Officer Lawrence stated that he worked in the identification unit and he collected evidence in the Marcus Scott incident. Officer Simpkins explained that he processed the co-defendant’s vehicle and noted that there was a bullet strike in the driver’s door. Sergeant Orr stated that he also processed the co-defendant’s vehicle and uncovered a casing, rubber glove, and a photo I.D. Sergeant Orr also lifted fingerprints off a cassette tape, a tape case, the rear-view mirror, and the rubber glove, which he turned in for examination. Detective Dunaway said that he interviewed Ms. Brooks and confiscated the co-defendant’s vehicle which he took to the crime lab for examination.

Officer Pyburn was qualified as an expert in firearms and tool mark identification. Officer Pyburn testified that a .40 caliber projectile found in the co-defendant’s car was fired from the handgun belonging to Mathias Smith. Officer Pyburn further testified that two .38 caliber class projectiles found at the Stevenson murder scene and one recovered from Pashay Stevenson’s autopsy matched two projectiles recovered from the Marcus Scott incident; thus, he concluded that all five projectiles were fired from the same weapon.

Officer Marsh was qualified as an expert in latent fingerprint identification. Officer Marsh testified that the defendant’s fingerprints matched the latent prints collected by Officer Lawrence on the inside and outside of the left rear window and on the left side front door post of the co-defendant’s car. Officer Marsh also testified that the defendant’s fingerprints matched the latent prints collected by Officer Simpkins on the right rear mini window, outside right rear door glass, and inside right rear window of the co-defendant’s car. Officer Marsh further testified that the defendant’s fingerprints matched those collected by Sergeant Orr on the cassette tape found in the co-defendant’s car. Officer Marsh admitted, however, that there was no way of knowing when the fingerprints were made or how long they might have been on the surfaces.

The defendant waived his right to testify and then put on the following proof. Kenetha Sawyers testified that she has known E. J. Bernard for approximately eighteen years and based on her discussions with others in the community she was of the opinion that he was not always truthful.

Dee Gunderson, a psychiatric nurse practitioner, testified that the defendant was currently her patient.⁴ Ms. Gunderson stated that the defendant was on anti-psychotic and mood stabilizer medicines, as well as a third medicine to combat the side-effects of the anti-psychotic medicine. Ms. Gunderson said that if a patient missed or was late receiving the mood stabilizer, the patient could experience psychotic symptoms and have the inability to know what they were doing or saying. The court instructed the jury to only consider Ms. Gunderson's testimony as it related to the defendant's outburst as reported by Ms. Woofter. The parties stipulated that the defendant was one and a half hours late receiving his medicine the day of the outburst.

The co-defendant testified that in July 2001 the defendant stayed with him approximately once a week and had access to his car.

Based on the evidence, the jury found the defendant guilty of second-degree murder. Following a sentencing hearing, the trial court sentenced the defendant to twenty-five years in the Tennessee Department of Correction as a range one violent offender.

ANALYSIS

On appeal, the defendant challenges the sufficiency of the convicting evidence. Specifically, he avers that the state presented insufficient proof of his identity as the shooter.

We begin our review by reiterating the well-established rule that once a jury finds a defendant guilty, his or her presumption of innocence is removed and replaced with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). Therefore, on appeal, the convicted defendant has the burden of demonstrating to this court why the evidence will not support the jury's verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). To meet this burden, the defendant must establish that no "rational trier of fact" could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Evans*, 108 S.W.3d 231, 236 (Tenn. 2003); Tenn. R. App. P. 13(e). In contrast, the jury's verdict approved by the trial judge accredits the state's witnesses and resolves all conflicts in favor of the state. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). The state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn from that evidence. *Carruthers*, 35 S.W.3d at 558. Questions concerning the credibility of the witnesses, conflicts in trial testimony, the weight and value to be given the evidence, and all factual issues raised by the evidence are resolved by the trier of fact and not this court. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). We do not attempt to re-weigh or re-evaluate the evidence. *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006). Likewise, we do not replace the jury's inferences drawn from the circumstantial evidence with our own inferences. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002). These rules are applicable to findings of guilt predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999).

⁴ The jury was not permitted to hear the name of the facility where Ms. Gunderson worked.

In the light most favorable to the state, the evidence shows that E. J. Bernard showed Xavier Donnell photographic arrays approximately two weeks after the homicide, at which time Mr. Donnell identified the defendant as the man who shot Pashay Stevenson. Later, Laura Dykes showed Mr. Donnell a copy of the photographic array and he pointed to the defendant as being involved in the Stevenson homicide. Mr. Donnell identified his signature on the document that referenced his identification of the defendant as the shooter. Also, Mathias Smith shot at the car in which the shooter escaped and thought he hit the driver's door. When recovered, the co-defendant's car had a bullet strike in the driver's door. Testing revealed that a discharged cartridge case found in the co-defendant's car was fired from Mathias Smith's .40 caliber handgun. Moreover, .38 caliber class projectiles recovered during the Marcus Scott incident were determined to be from the same gun as projectiles found at the scene of the Stevenson homicide and during the autopsy of Mr. Stevenson's body. We recognize that during the trial, questions were raised as to the credibility of various witnesses; however, the jury heard all the evidence, both direct and circumstantial, and judged the credibility of the witnesses. This court will not second-guess the inferences drawn and credibility determinations made by the jury. Accordingly, the judgment of the trial court is affirmed.

CONCLUSION

Based on the aforementioned reasoning and authorities, we affirm the judgment of the Davidson County Criminal Court.

J.C. McLIN, JUDGE